REMARKS

In this response, claims 34 and 44 have been amended to clarify the ratios of the various listed components. The amendments do not add new matter and are supported by originally-filed claim 32 and by the originally-filed specification at page 11, lines 24-28. No claims have been added or canceled. Accordingly, claims 34-46, 48 and 52-61 remain pending in the present application. Reconsideration of the above-identified patent application is hereby requested.

REJECTIONS UNDER 35 U.S.C. § 103

The Examiner has rejected claims 34-46, 48 and 52-61 under 35 U.S.C. § 103(a) as obvious over Imai (U.S. Patent No. 5,514,398) ("Imai"), Jandacek (U.S. Patent No. 3,865,939) ("Jandacek"), and Lane (U.S. Patent No. 5,591,772) ("Lane").

Independent claims 34, 44, 52 and 57 recite methods that include providing an oil comprising a combination of tocotrienols and/or tocopherols, free sterols and/or steryl esters, and cycloartenols. Relying on In re Kerkhoven, 205 USPQ 1069 (CCPA 1980), the Examiner has combined Imai, Jandacek and Lane to reject the pending claims. In re Kerkhoven holds that it is *prima facie* obvious to combine compounds known to be useful for the same purpose to create a new compound to be used for that same purpose. Id. at 1072. However, Kerkhoeven is inapposite because the asserted references teach away from Applicant's claimed combination of compounds.

First, the Lane reference specifically teaches that sterol compounds should not be combined with tocotrienols to obtain optimum cholesterol reduction. In support of that teaching, it provides a method of removing sterol compounds from rice bran. According to Lane, unlike sterol-free tocotrienol compositions, "diets supplemented with sterols were not effective in lowering total serum or LDL-cholesterol levels." Lane at 30:62-63. See also Lane at 12:60-65; 31:1-9 and 33:25-60.

Imai also teaches away from the claimed combination of compounds. Imai teaches the use of a tocotrienol-free composition--the rice bran extract γ-orzanol ("γ-OZ")--to decrease cholesterol. Although tocotrienols naturally occur in rice bran (see Lane at 2:33-38), Imai teaches the use of the γ-OZ extract, which according to Imai lacks tocotrienols. See Imai at 1:31-38. Thus, taken as a whole, Imai teaches that sterols and tocotrienols should not be combined to obtain anticholesterolemic benefits. Because Imai and Lane teach away from the claimed combination, the combination of references is improper, In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125 (Fed. Cir. 1984).

Second, none of the asserted references--alone or in combination--discloses the ratios and weight percentages claimed in claims 34, 44 and 52. Claims 34 and 44, as amended, recite providing an edible oil comprising (i) at least one of a tocotrienol and a tocopherol, (ii) at least one of a free sterol and a steryl ester, and (iii) a cycloartenol, wherein the ratio of (i):(ii) ranges from 1:0.5 to 1:5.0, the ratio of (ii):(iii)

ranges from 1:0.01 to 1:0.1 and the ratio of (i):(iii) ranges from 1:0.05 to 1:0.5. Similarly, claim 52 is directed to a method of treating blood cholesterol in a patient by administering an oil comprising specific weight percentages of tocotrienols/tocopherols, free sterols, steryl esters and cycloartenols.

Relying on In re Boesch and Slaney, 205 USPQ 215 (C.C.P.A. 1980), the Examiner has asserted that it is within the level of ordinary skill in the art to "optimize the effective amounts" of the claimed compounds. However, Boesch merely holds that it is obvious to optimize a variable that is known to be "result effective." Id. at 219. Even if optimizing the effective amounts of each compound were known to be result effective, the prior art does not teach or suggest that the ratio or weight percent of the tocotrienol/tocopherol, free sterol/steryl ester and cycloartenol compounds with respect to one another is result effective. Accordingly, it would not have been obvious to one of ordinary skill in the art to have optimized the claim combination of compounds to arrive at the ratios and weight percentages recited in claims 34, 44 and 52.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

JEFFER, MANGELS, BUTLER & MARMARO LLP

Dated: 11/13/03

By: _____

Steven R. Hansen, Esq.
Reg. No. 39,214
1900 Avenue of the Stars
Seventh Floor
Los Angeles, CA 90067-4308
(310) 203-8080